Filed

No. 115

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D. 1901.

HARRIET M. ZANE,
Petitioner,

vs

THE COUNTY OF HAMILTON, STATE OF ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

GEORGE A. SANDERS,
Solicitor for Petitioner.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D. 1901.

HARRIET M ZANE,
Plaintiff in Error,
vs.
THE COUNTY OF HAMILTON, ILLINOIS,
Defendant in Error.

Petition for Writ of Certiorari to the Supreme Court of the United States of America.

The petition of Harriet M. Zane, plaintiff in error, for a writ of certiorari, directed to the United States Circuit Court of Appeals, for the Seventh Judicial Circuit, under the provisions of Section 6, of the Act of Congress, approved March 3, 1891, and ordering that the records in a certain appeal by writ of error be certified to this honorable Court for its review and determination.

That said appeal by writ of error is entitled as follows: "Harriet M. Zane, plaintiff in error, vs. The County of Hamilton, defendant in error; No. 675, October Term, A. D. 1899. United States Circuit Court of Appeals for the Seventh Circuit."

STATEMENT OF THE CASE.

The declaration is in the usual form, to which the defendant filed a general demurrer. Upon a hearing on the demurrer, the Court sustained the demurrer, and gave judgment for the defendant for costs. The plaintiff elected to stand by her declaration and took a writ of error to the United States Circuit Court of Appeals for the Seventh Circuit.

The facts are stated in the declaration and in the assignments of error. The demurrer admits the facts as stated in the declaration; but denies the right of the plaintiff to recover under the law applicable to the case.

The facts stated in the declaration and admitted by the demurrer were that the defendant at its Court House at McLeansboro, in the district of Southern Illinois, made, executed and delivered by S. B. Stelle, then Judge of Hamilton county, Illinois, and J. W. Marshall, then Clerk of the County Court of said county, among others, its six county bonds, numbered 45, 46, 47, 48, 49 and 50—commonly called Railroad Aid bonds, for $1,000 each, bearing interest at the rate of seven per cent per annum, evidenced by coupon interest notes each for $35.00, due and payable on the first days of January and July of each year.

The bonds were dated Oct. 23, 1871, and issued to the St. Louis & Southeastern Railway Company, or bearer, and were payable in the city and State of New York, twenty years after date, and payable at any time before they became due after five years.

The bonds were registered by the auditor of the State of Illinois, November 1, 1871, and with coupons attached evidencing the interest and were exact copies of each other except as to their serial numbers, date of interest due and numbers of the bonds. A copy of bond No. 46 and coupon serial No. 40, due January 1, 1892, are given in Assignment of Errors.

The recital on each bond is: "This bond is one of two hundred of like tenor and amount, of same issue, and it is issued under and by virtue of the authority given by a majority of all legal voters in said county, by their votes, at an election held in said county *pursuant to law*, on the 3d day of November, A. D. 1868, and also by the authority given by the provisions of an Act of the General Assembly of the State of Illinois, in force March 10, A. D. 1869, entitled "an Act to incorporate the St. Louis & Southeastern Railway Company."

This bond is also issued under the provisions of an Act of the General Assembly of the State of Illinois, in force April 16, 1869, entitled, "An Act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns." This bond is issued in part payment of a subscription made by said county, under and by virtue of the author-

ity aforesaid, to the capital stock of the said St. Louis and Southeastern Railway Company in the sum of two hundred thousand dollars.

The plaintiff avers in the declaration that she purchased the six bonds and coupons mentioned therein as an investment in the usual course of business, for a good and valuable consideration long before there was any default in the payment of interest or principal of said bonds and without any notice whatever of any supposed want of legislative power, or irregularity in their issue.

October 2, 1900, the United States Circuit Court of Appeals for the Seventh Circuit handed down an opinion in the cause affirming the decision of the trial Court.

A petition for a rehearing was filed by the plaintiff and heard May 2d, 1900, and on the 13th day of November, 1900, the petition for a rehearing was denied.

HISTORY OF THE BONDS AND CASES THEREON.

An election was held *pursuant to law* November 3, 1868, and a majority of the electors voted to subscribe $200,000 to the stock of the St. Louis & Southeastern Railway Company, and issue in payment of the stock subscribed $200,000 of bonds 5—20 years with 7 per cent semi-annual interest, dated October 23, 1871, and registered by the State Auditor November 1, 1871.

Petitioner purchased her bonds and coupons in the case at bar for a good and valuable consideration, on or about

February 1, 1874, without any notice of any claimed want of power to, or irregularity in their issue, and long before any default in the payment of interest.

The interest was regularly paid on these bonds until 1880 or thereabouts.

The first adjudication concerning this issue of bonds was in a chancery proceeding commenced by the County of Hamilton to restrain and enjoin the levy and collection of taxes to pay interest on these bonds. This case was removed to the Federal Court of the Southern District of Illinois by Walter Jackson, who filed a cross-bill, and upon a hearing of the bill and cross bill, Jackson's bonds ($105,000) as numbered in his cross bill, 105 bonds were held, "valid, legal and binding obligations of the said county."

The original bill was dismissed at the cost of the complainant and this decree, dated June 5, A. D. 1881, was never appealed from, reversed, or in any manner set aside or annulled, and the bonds and interest covered by this decree have since been fully paid by the defendant, the county of Hamilton.

Six years thereafter, June 16, 1888, a decision in an *ex-parte* proceeding was rendered by the State Supreme Court in the case of the *People vs. Hamill*, 134 Ill. 670-671, holding this issue of $200,000 of bonds void for want of legislative power to issue them. That the Act of March 10, 1869, was in violation of Section 23, Article 3, of the Constitution of Illinois of 1848, because it was (as held by that Court) a local act, and

not germane to the object expressed in its title, and therefore conferred no legislativve authority for the issue of the bonds.

October 5, 1896, the United States Circuit Court of Appeals rendered a decision in the case of Austin vs. Hamilton County, 22 C. C. A., 128, in which other bonds and coupons of this same issue than those mentioned by number in the decree of the Federal Court were involved. The trial Court followed the State Court decision in the People vs. Hamill, 134 Ill. 666, and the Appellate Court affirmed that decision, giving for one reason, that Austin, the holder of the bonds, did not appear to be an innocent purchaser and bona-fide holder of the bonds.

In the Austin case the Court say: "Here it is true, the findings say that the construction of Section 20 of the Act of Incorporation of the Railroad Company, was not drawn in question, passed upon or 'decided' in the chancery cause. *But that is a mistaken conclusion of law*, rather *than a finding of fact*, under the issues joined, both upon the bill and the cross bill, the validity and force of that section, equally with any other enactment referred to in the recitals of the bonds, were *necessarily* within the scope of inquiry, whether actually considered or not, and therefore were *determined* by *the decree*, in which, according to the findings, Jackson's bonds were specified by number and all declared valid. The question of the *validity* of these (Jackson's) bonds *is not open to reconsideration*."

The validity of the enabling Act of March 10, 1869, and that it was not repugnant to the constitution of 1848, was established by the decree of the Federal Court of June 5, 1881, and by the Austin case, *supra*, Oct. 5, 1896, overruling the State Court in the Hamill case, *supra*, decided June 16, 1888, as to the constitutionality of the Act of March 10, 1869, which is the dominant question in the case at bar.

May 7, 1896, the United States Circuit Court of Appeals in the case of Bolles et al vs. Hamilton County, affirmed the decision of the trial Court which was for the defendant, and refused to pass upon the merits of the controversy, because there were no special findings with the bill of exceptions, and as they held, no question was presented for their consideration.

The next and last attempt at adjudication of these bonds is in this case, Harriet M. Zane vs. Hamilton County, Oct. 2, 1900, No. 675 decision in 104 Fed. Rep., 63, in which we now ask for a writ of certiorari.

In this case the Appelate Court affirms the trial Court's decision, stating that it had followed the State Court decision in the Hamill case, 134 Ill. 666, in its decision in the Austin case, and must recognize it in the case at bar, and that such State Court decisions were binding on the Federal Courts.

Petition for a rehearing was filed in October, 1900, and overruled.

We cite the decision of the Appellate Court, which is as follows, to-wit:

Woods, Circuit Judge. This was an action in assumpsit, brought by Harriet M. Zane, a citizen of Massachusetts, against the County of Hamilton, Illinois, to recover the amount alleged to be due upon six bonds for $1,000 each, issued in the name of the county to the St. Louis and Southeastern Railway Company, or bearer, and of which the plaintiff was alleged to be an innocent purchaser. The Circuit Court sustained a demurrer to the declaration, and, the plaintiff refusing to amend, gave judgment for the defendant. The question is whether there was authority of law for the issue of the bonds. The bonds bear date October 23, 1871, and were not executed before that date. They are a part of the issue of $200,000 referred to in the case of Austin vs. Hamilton County, 22 C. C. A. 128, 76 Fed. 208, but are not a part of the 105 bonds which, as shown in that case, had been owned by Walter M. Jackson and in a suit to which the county and he were parties had been adjudged to be valid. The only authority asserted for the issue of the bonds is Section 20 of the Act of March 10, 1869, whereby the St. Louis & Southeastern Railway Company was incorporated. In People vs. Hamill, 134 Ill. 666, 17 N. E. 799, 29 N. E. 280, where the validity of these bonds was an issue, it was held that they were invalid, because Section 20 of the act mentioned was void, as being in violation of the provision of the constitution of the State (Article 3, Sec. 23), that "no private or local law * * * shall embrace more than one subject, and that shall be expressed in the title." This Court recognized the authority of that decision in the Austin case, and must recog-

nize it now. It follows that the bonds were issued without authority of law, and in the hands of any and all holders, unless, like Jackson, they can claim under an unreversed adjudication, must be regarded as invalid. No recital can supply the want of legal authority for their execution. The judgment below is affirmed.

ASSIGNMENT OF ERRORS.

And now comes the plaintiff, by her attorney, George A. Sanders, and says that there are manifest errors in the record and proceedings in the above entitled cause in this:

FIRST.

The Court erred in sustaining defendant's demurrer to plaintiff's declaration and giving the judgment for defendant on the demurrer for costs.

The plaintiff in this case elects to stand by her declaration, which is in the words and figures following, to-wit:

DECLARATION.

Harriet M. Zane, a resident and citizen of Boston, State of Massachusetts, plaintiff in this suit, by George A. Sanders, her attorney, complains of the County of Hamilton, in the State of Illinois, a public corporation, organized and existing under and by virtue of the laws of the State of Illinois, a citizen of said State, resident of the Southern District of Illinois, defendant in this suit, who has been summoned, etc., to answer to the plaintiff in a plea of trespass on the case on promises.

For that whereas the defendant heretofore, at the county seat of Hamilton County, in the district aforesaid, at the Court House at McLeansboro, made, executed and delivered by S. B. Stelle, then County Judge of Hamilton County, Illinois, and J. W. Marshall, then Clerk of the County Court of said county, among others, its six (6) county bonds, numbered 45, 46, 47, 48, 49 and 50, commonly called railroad aid bonds, for $1,000.00 each, bearing interest at the rate of seven per cent per annum, evidenced by coupon interest notes of $35.00 each, due and payable on the first days of January and July of each year.

That said bonds were dated Oct. 23, 1871, and issued to the Southeastern Railway Company, or bearer, and were payable in the City and State of New York twenty years after date, payable at any time before they became due after five years, with interest at the rate of seven per cent per annum, payable semi-annually on the first days of January and July of each year where the State Treasurer of the State of Illinois pays the interest and debt of said state, in the City of New York.

That said bonds were registered by the Auditor of the State of Illinois, November 1, 1871, and with coupons evidencing the interest, attached, so made executed and delivered, payable to the St. Louis & Southeastern Railway Company, or bearer, were exact copies of each other except as to their serial numbers. That Bond No. 46 issued with the other five bonds named as aforesaid, being in the words and figures following, to-wit:

UNITED STATES OF AMERICA.

No. 46. BOND OF $1,000.00.

HAMILTON COUNTY.

Interest seven per cent. Payable semi-annually.

STATE OF ILLINOIS.

Know all men by these presents, that the County of Hamilton, in the State of Illinois, acknowledges itself indebted and firmly bound to the St. Louis & Southeastern Railway Company, or bearer, in the sum of one thousand dollars lawful money of the United States of America, which sum said county for value received, promises to pay to said company, or bearer, in the City and State of New York, twenty years after date, payable at any time before this bond becomes due after five years at the pleasure of said County of Hamilton with interest thereon, from the date hereof at the rate of seven per cent per annum, payable semi-annually on the first days of January and July, in each year on the presentation and surrender, at the place in the said City of New York where the Treasurer of the State of Illinois pays the interest and debt of the said State, of the coupons hereto attached as they severally become due.

This bond is one of two hundred of like tenor and amount, of same issue, and it is issued under and by virtue of the authority given by a majority of all the legal voters in said county, by their votes, at an election held in the said county, pursuant to law, on the third day of November, A. D. 1868, and also by the authority given by the provisions of an act

of the General Assembly of the State of Illinois, in force March 10, A. D. 1869, entitled "An Act to incorporate the St. Louis & Southeastern Railway Company."

This bond is also issued under the provisions of an act of the General Assembly of the State of Illinois, in force April 16, A. D. 1869, entitled "An Act to fund and provide for the payment of the Railroad debts of Counties, Townships, Cities and Towns."

This bond is issued in part payment of a subscription made by said county, under and by virtue of the authority aforesaid, to the capital stock of the said St. Louis & Southeastern Railway Company in the sum of Two Hundred Thousand Dollars.

In testimony whereof, the said County of Hamilton has executed this bond, by the County Judge of the said county, under the order of the County Court of said county, signing his name hereto, in open Court, and by the Clerk of said Court, in obedience to the order thereof attesting the same and affixing hereto the seal of the said Court, in open Court.

Done at the Court House at McLeansboro,
[Seal] in said County, on this, the 23d day of October,
Anno Domini 1871.

T. B. STELLE,
County Judge of Hamilton County, Ill.

Attest:

J. W. MARSHALL,
Clerk the County Court of Hamilton County, Ill.

Endorsed:

AUDITOR'S OFFICE, ILLINOIS.

Springfield, Nov. 1, 1871.

I, Charles E. Lippincott, Auditor of Public Accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled, "An Act to fund and provide for paying the railroad debts of Counties, Townships, Cities and Towns," in force April 16, 1869.

In testimony whereof, I have hereunto
[Seal] subscribed my name and affixed the seal of my office, the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor P. A.

And plaintiff avers that each of her six bonds has attached nine (9) coupons, or interest warrants at $35.00 each, series 31 to 40, inclusive, dated Oct. 23, 1871, and due January and July of 1887, 1889, 1890, 1891, and January 1, 1892, representing the interest on each of soid bonds at the rate of seven per cent per annum and payable in the City of New York aforesaid. That said coupons were all an exact facsimile of each other save as to the number of the bonds to which they are attached, their serial numbers and the dates when they became due.

Coupon serial No. 40, on bond No. 46, due January 1, 1892, in the words and figures following, to-wit:

$35.00. $35.00.

McLeansboro, Hamilton County, Illinois.

October 23, 1871.

The County of Hamilton, in the State of Illinois, promises to pay the sum of Thirty-five Dollars on the first day of January, 1892, lawful money of the United States of America, being six months' interest on Bond No. 46, for One Thousand Dollars, issued on subscription to the St. Louis & Southeastern Railway Company.

This coupon is payable in the City of New York.

J. W. MARSHALL, Clerk.

Plaintiff avers that said bonds are a part of an issue of two hundred of like tenor and amount, save as to dates of issue and registration, as aforesaid, under and by virtue of the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10, 1869, incorporating the St Louis & Southeastern Railway Company, and of a vote of a majority of the legal voters in the said County at an election held pursuant to law, November 3, 1868, and also by virtue of the provisions of an act of the General Assembly of the State of Illinois, in force April 16, 1869, entitled, "An Act to fund and provide for the payment of the railroad debts of Counties, Townships, Cities and Towns." And that said six (6) bonds were duly registered by the State Auditor as aforesaid, November 1, 1871, under the act of April 16, 1869.

Plaintiff further avers that said six (6) bonds and the coupons thereto attached were purchased by her for an invest-

ment in the usual course of business, for a good and valuable consideration, somewhere on or about February 1, 1874, and long before there was any default in the payment of the interest or principal of said bonds and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

By means whereof, and by force of the statute in such cases made and provided, said defendant became liable to pay said plaintiff said sums of money in said bonds and coupons or interest warrants specified according to the tenor and effect of said coupons and bonds, and being so liable said defendant in consideration thereof, afterwards, towit: on the same day and year last aforesaid, and at the County and District aforesaid, undertook then and there and faithfully promised the said plaintiff, well and truly to pay unto said plaintiff the said sums of money, and interest thereon as specified in the bonds and coupons, or interest warrants, according to their tenor and effect.

For that whereas the said defendant on the 1st day of October in the year of our Lord 1898 at the County and District last aforesaid, was indebted to the plaintiff in the sum of Twenty Thousand Dollars ($20,000), of like lawful money as aforesaid, for money before that time lent and advanced by said plaintiff to said defendant; and that a like request of said defendant before that time paid out and expended for the said defendant; and at a like request of the defendant and for money by said defendant before that time had and received, due and for use of said plaintiff; and being so indebted, said

defendant in consideration thereof, afterwards, to-wit: on the same day and year and at the same place aforesaid, undertook and faithfully promised said plaintiff well and truly to pay the said plaintiff the sums of money in this count mentioned.

And whereas, also, the defendant afterwards, to-wit: upon the same day and year, and at the County and District aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the defendant to said plaintiff, then and there being in arrears and unpaid, and upon such accounting said defendant then and there was found in arrears, and in debt to the plaintiff in the further and other sum of Twenty Thousand Dollars ($20,000) lawful money as aforesaid, and being so found in arrears and indebted to the plaintiff, the defendant, in consideration thereof, afterwards, to-wit: on the same day and year and at the same place aforesaid, undertook and then and there faithfully promised to pay said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant, although often requested, has not paid the several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiff, but defendant has hitherto altogether refused and still does refuse to the damage of said plaintiff of Twenty Thousand Dollars ($20,000) and therefore said plaintiff brings this, her suit, etc.

(Signed) GEORGE A. SANDERS,
Plaintiff's Attorney.

The County of Hamilton,
State of Illinois.

To Harriet M. Zane, Dr.—

To goods, wares and merchandise sold and delivered	$20,000
To money lent and advanced	20,000
To money paid out and expended	20,000
To money had and received	20,000
To balance due on account	20,000
To interest forborne due plaintiff	20,000

A general demurrer to plaintiff's declaration was filed, as follows, to-wit:

United States of America, } ss.
Southern District of Illinois. }

IN THE UNITED STATES CIRCUIT COURT.

JANUARY TERM, A. D. 1899.

Harriet M. Zane
vs.
County of Hamilton.

And the said defendant, by J. R. Williams and J. M. Hamill, its attorneys, comes and says that the declaration in said cause is not sufficient in law.

(Signed.)

J. R. WILLIAMS and
J. M. HAMILL,
Attorneys for Defendant.

Declaration endorsed as follows: No. 8545. Circuit Court, January Term, A. D. 1899. Harriet M. Zane, plaintiff, vs. The County of Hamilton, defendant. Declaration. Filed November 7, 1898. James T. Jones, Clerk.

Demurrer to the declaration endorsed: Harriet M. Zane vs. County of Hamilton. Demurrer to Declaration. Filed January 6, 1899. James T. Jones, Clerk.

SECOND.

The Court erred in not overruling the general demurrer of defendant to plaintiff's declaration and in giving judgment for defendant for costs.

The demurrer admits the facts as stated in the declaration, but denies that under the law applicable to this case, the plaintiff has a right to recover on the instruments mentioned in the declaration.

The declaration states that the defendant by its then County Judge, S. B. Stelle, and its then County Clerk, J. W. Marshall, at its Court House in McLeansboro, the county seat of defendant, Hamilton County, Illinois, did make, execute and deliver among others, its six (6) county bonds numbered 45, 46, 47, 48, 49 and 50, commonly called railroad aid bonds, for $1,000 each, bearing interest at the rate of seven per cent per annum evidenced by coupon interest notes for $35.00 each and payable January and July of each year.

That said bonds were dated October 23, 1871, and issued to the St. Louis & Southeastern Railway Company, or bearer, and were payable in the City and State of New York, twenty years from date or at any time after five years at the option

of the county, with seven per cent interest January and July 1st of each year where the State Treasurer of the State of Illinois pays the interest and debt of said State in the City of New York.

That said bonds were registered by the then State Auditor November 1, 1871, as will fully appear by copy of a bond, No. 46, *supra*.

That said bonds were a part of an issue of two hundred of like tenor and amount and issued under and by virtue of the authority given by a majority of all legal voters of said County, by their votes, at an election held in said County, pursuant to law, on the 3d day of November, 1869, and also by authority given by the provisions of an Act of the General Assembly of the State of Illinois, in force March 10, 1869, entitled, "An Act to incorporate the St. Louis & Southeastern Railway Company."

The bonds were also issued under the provisions of an act of the General Assembly of the State of Illinois, in force April 16, 1869, entitled, "An Act to fund and provide for the payment of the Railroad debts of Counties, Townships, Cities and Towns."

The bonds were issued in part payment of a subscription made by said County, under and by virtue of the authority aforesaid, to the capital stock of said St. Louis & Southeastern Railway Company in the sum of Two Hundred Thousand Dollars ($200,000.)

Plaintiff avers that she purchased the six bonds and coupons mentioned in the declaration as an investment in the

usual course of business, for a good and valuable consideration long before there was any default in the payment of the interest or principal of said bonds and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

The above facts are all admitted by the demurrer and make the plaintiff a bona fide holder and owner for value of the bonds and coupons mentioned in the declaration.

"*An act to incorporate the St. Louis & Southeastern Railroad Company.*" *In force March 10, 1869. Pages 239-245, Private Laws, State of Illinois, Vol. 3, 1869.*

Sec. 15. The several counties in which any part of said railway may be hereafter located, or that may lie on or near the line of the railway, and the several townships in such counties which have adopted or may hereafter adopt township organization and the cities and incorporated towns in the said counties, are hereby authorized to subscribe and take stock in said company upon the application of said company, for such an amount as they may think proper, payable in bonds, lands or right of way, and subject to such agreements and stipulations, as to the route of said railway, the time of delivery and payment of the bonds, as may be agreed upon: Provided, that no subscriptions shall be made by any County Court nor by the legal authorities of an incorporated city or town or township, until after the question of such subscription shall have been submitted, by order of the County Court or other legal authorities of said city, town or township to the legal voters thereof, at a general or special election to be

called, conducted and returns made, canvassed and published in the usual manner of conducting elections in said County, incorporated city or town or township. All such notices shall state the amount of such subscription that would be submitted at such election; at which election each voter shall vote a ticket, upon which is printed or written "For Subscription" or "Against Subscription," and if a majority of the ballots cast at such election shall be "For Subscription," it shall be the duty of the County Court or the legal authorities of such incorporated city, town or township, to subscribe the amount stated in the order of election to the stockholders of said company.

Sec. 16. Elections may be held in any such county, incorporated city or town or township upon the question whether such county, city, town or township shall subscribe for any specified amount of the capital stock of said railway company whenever a petition shall be presented, as hereinafter described; and as often as may be required by petitioners, whenever a petition shall be presented to the County Clerk, signed by fifty legal voters of any such county, setting forth the amount of stock to be taken by such county and specifying the time for holding of such election, it shall be the duty of the County Clerk of any such county to give thirty days' notice of the time for holding such election, which time shall be the same as that specified in said petition; and whenever a petition shall be presented to the supervisor of any such township, or to the corporate authorities of any such city or town, signed by twenty-five legal voters of any such

township, city or town, setting forth the amount of stock proposed to be taken by any such township, city or town, and specifying the time for holding such election, it shall be the duty of the supervisor of every such township and the duty of the clerk of any such city or town to give thirty days' notice of the time of holding such election in such township, city or town, which time shall be the same as that specified in such petition; and all such notices shall be given in the same manner, and such election shall be conducted and returns made, canvassed and published in the same way and at the same places provided for holding general elections in such counties, townships, cities and towns; at which elections the qualified voters of the respective counties, townships, cities and towns shall vote "For Subscription," or "Against Subscription," and if a majority of the votes cast at such election by voters voting on that subject, shall be "For Subscription," it shall be the duty of the County Court or Board of Supervisors of every such county, the Supervisor and Clerk of such township and the corporate authorities of such city or town to subscribe at once, upon the request of the directors or corporators of said company, the same amount so voted for, and to issue and deliver to said company the same amount on the stock so subscribed of the bonds of such county, township, city or town, as the case may be, payable at any time specified, not exceeding twenty years from date, or sooner at the option of the county, township, city or town issuing the same, with interest coupons attached to the same at a rate not exceeding eight per cent, payable annually or semi-annually;

which said bonds shall be of such denomination and the principal and interest payable at such place or places, whether within or without the State, as may be agreed upon: Provided, that at any election held under the provisions of this act at any other time than the time for holding general elections for State of County purposes, it shall not be necessary for the several boards of registry to make a new register of the several voting precincts, but the register made of the legal voters at the last general election held for the election of State and County officers, may be used: And, provided, that the vote of any legal voter, whose name does not appear on the said register, shall be received and taken in the same manner that unregistered legal voters' (votes) are taken at any general election.

Sec. 17. Any incorporated city, town or township, or any county, through or near which the said railroad shall run, is hereby authorized to donate and give, as a bonus to the said railway company, any amount they may deem proper, upon such term and conditions as may be agreed upon by and between said city, town, township or county, and the said railway company to secure the building of said railway: Provided, that the authorities of said city, town, township or county shall submit the question whether such donation or bonus shall be given, to the legal voters thereof, at a regular or special election, held after at least thirty days' notice, and conducted, canvassed and returns made in the usual manner and places—the amount proposed to be donated being stated in the order for such election, and the tickets voted at such

election shall have written or printed on them "For Donation" or "Against Donation;" and if at such election the majority of the legal votes cast shall be in favor of such donation, it shall be the duty of the proper authorities of such city, town or township, or county, to provide for the payment of such donation or bonus. And to provide the means for the payment of any such sum as may be given or agreed to be given, in pursuance of the provisions of this act, the said city, town, township or county shall issue bonds to said railway company, in sums of not less than one hundred dollars each, bearing interest at any rate not exceeding eight per cent per annum, and payable at such times and places, either within or without this State, as may be agreed upon; which bonds may run for any period not exceeding twenty years.

Sec. 18. It shall be the duty of the respective authorities of the several counties, townships, cities and towns which may make such subscriptions and donations, and they are hereby required, to levy and collect a sufficient special tax on all the taxable property, both real and personal, in such counties, townships, cities and towns, to pay the interest, annually or semi-annually, accruing on such bonds, and to discharge the principal and interest, respectively, thereof.

Sec. 20. And the said company may lease or purchase, upon such terms as may be agreed upon, any other railroad or parts of railroad, either wholly or partially constructed, which may constitute or be adopted, as part of their main line; and by such lease or purchase, they shall acquire and become vested with all the rights and franchises pertaining

to said road, or part of road, in the right of way, construction, maintenance and working thereof. And the County Court of Gallatin County is hereby authorized and empowered to subscribe to the capital stock of the company the One Hundred Thousand Dollars, or any part thereof, heretofore voted by a majority of the legal voters of said county to the Shawneetown branch of the Illinois Central Railroad Company. *And the County Court of Hamilton County is hereby authorized and empowered to subscribe to the capital stock of this company the Two Hundred Thousand Dollars, or any part thereof, heretofore voted by a majority of the legal voters of said county to the Shawneetown branch of the Illinois Central Railroad Company.* And the County Court of Jefferson County is hereby authorized and empowered to subscribe to the capital stock of this company the One Hundred Thousand Dollars, or any part thereof, voted by a majority of the legal voters of said county to the Mt. Vernon Railroad Company. And it shall not be necessary to submit the question of making the several subscriptions in this section mentioned to the vote of the legal voters of said respective counties:

Provided, that nothing herein shall be so construed as to prevent either of the counties mentioned in this section subscribing any other or larger amounts to the capital stock of this company than the amounts mentioned in this sec

Sec. 21. *This Act shall be deemed a Public Act* and *shall be liberally construed* for all purposes therein expressed and declared, and shall be in force from and after its passage.

THIRD.

The Court erred both in not holding the act of March 10, 1869, constitutional and in not following the decisions of this honorable Court on that question and in not giving judgment for the plaintiff for the amount found due on her bonds and coupons.

Your petitioner represents that the constitutionality of the Act of Incorporation of the Railroad Company of March 10, 1869, is, under the pleadings, the all important question in this case.

This act was held as granting ample legislative authority for the issue of these bonds in the decree of the Federal Circuit Court in the Jackson case June 5, 1881, and this decree was affirmed in the Austin vs. Hamilton County case, 22 C. C. A. 132, Oct. 5, 1896, and that it was not repugnant to the constitution of the State of Illinois of 1848.

The State Court decision in the Hamill case of June 16, 1888, 134 Ill. 666, is the only other case where the constitutionality of this act was decided.

Our contention is that the Appellate Court in the case at bar should, on this question, have followed the decision in the Jackson case and the decree of Judge Treat of June 5, 1881, and the decisions on this question in the Austin case of October 5, 1896.

First, because this whole issue of $200,000 of bonds were all issued under the same act of March 10, 1869, by the same officials of the county defendant of same date, tenor and effect, to the same railroad company, for the same purpose, and regis-

tered at the same time by the State Auditor. It follows of *necessity*, that on the one question of legislative authority, if the act was constitutional and Jackson's 105 bonds were legally issued under it, the other 95 bonds *must have had equal* legislative authority for their issue.

And, second, because the question involved was "one which follows among the general principles and doctrines of Commercial Jurisprudence"—"upon which it is the duty of the Federal Courts to form an independent judgment and in respect of which they are under no obligation to follow implicitly the conclusions of any other Court, however learned or able it may be."

Pana vs. Bowler, 107 U. S. 541 and citations.

In that case the United States Supreme Court overruled a State Court decision on an analogous case from Illinois, and state the rule as follows, to-wit: "When the construction of a State Constitution or law has become settled by the decision of the State Courts, the Courts of the United States will, as a general rule, accept it as evidence of what the local law is." Ibd. 540.

But this was not the rule in the Illinois Supreme Court at the time of the Hamill decision, but the reverse.

This very same question and the consideration of Illinois cases deciding the constitutionality of exactly similar acts is carefully reviewed in Unity vs. Burrage, 103 U. S. 455-559, deciding such acts to be *not local* and *private, but public acts.*

Up to this date, and long afterwards, the State Supreme

Court supported our contention, that this act of March 10, 1869, and similar acts, as to title, were not repugnant to the State Constitution of 1848.

Belleville, etc., Railroad Co. vs. Gregory, 15 Ill. 20.

Firemen'sBenevolent Association vs. Lounsbury, 21 id. 511; Schuyler County vs. People, 25 id. 181; O'Leary vs. County of Cook, 28 id. 534; Eslinger vs. Boncan, 51 id. 95; People vs. Brisleu, 80 id. 423; Beinz vs. Weber, 81 id. 288; Johnson vs. The People, 83 id. 431; Supervisors vs. C., B. & Q. R. R. Co., 44 id. 229; City of Ottawa vs. The People, 48 id. 233.

In construing an act to incorporate the Jacksonville & Southeastern Railway Company, the State Supreme Court say in City of Virden vs. Allen, 107 Ill. 506, October term, 1883: "*If there is, or can be, anything settled in this Court, it is that such power could be granted and exercised under the constitution of 1848, and it has been repeatedly held, and it is equally well settled, that when a charter to authorize the construction and operation of a railroad confers power upon Municipalities, it is germane to such charters, and does not constitute a different subject from that of power to construct the road; that it is but a means to the end, and it is but a part of the whole power, and is properly conferred. The voting of stock and issuing of bonds to pay for same, are most essential means to the end of building railroads.*"

It will thus be seen, that "*the Rule*" of Construction of such Acts of Incorporation of Railroad companies in Illinois

by its State Supreme Court, up to the Hamill case in June, 1888, was that such Acts were *not repugnant* to the Constitution of Illinois of 1848.

The decisions of this honorable court support overwhelmingly our contention.

> Pana vs. Bowler, 107 U. S., 103 U. S., Unity vs. Burrage, 103 U. S. 456-460; San Antonia vs. Mehaffy, 96 U. S. 315; Jonesboro City vs. Cairo & St. Louis R. R. Co., 100 U. S. 192; Mount Clair vs. Ramsdel, 107 U. S. 147.

It seems to us that *The Rule* of Construction as to the Constitutionality of the Act of March 10, 1869, and similar Acts by the State Supreme Court of Illinois is, that such acts are constitutional. The one exception seems to be the Hamill case.

But if this were not so under the doctrines of Commercial Jurisprudence, it would be the duty of the Federal Courts to form an independent opinion, or follow the decisions of this court, which certainly sustain our contention as shown above. This question of following State Court decisions is fully discussed in Burgess vs. Seligman, 107 U. S. 33-34. Where the Court say, "But where the law *has not been thus settled*, it is the right and duty of the Federal Courts to exercise their own judgment; *as they always do in reference to the doctrines of Commercial law and general Jurisprudence*."

It seems to us there can be no doubt as to the Constitutionality of the Act of March 10, 1869, under which the bonds were issued. If so, it is the only question in the case, and

decisive, as under the averments of the declaration are admitted by the Demurrer. The Petitioner is a bona-fide holder of her bonds and coupons, purchased long before there was any default in payment of interest, or any litigation concerning the validity of the bonds, and under the admitted averments is entitled to recover.

All the Equities are with the Petitioner and *ought to have great weight* in the court of last resort.

Your Petitioner further represents that the decision of the Appellate Court is at variance with the State Court decisions, and the decision of other states, and other United States Appellate Courts, and this honorable court on the great question of the Constitutionality of the Act of March 10, 1869, conferring the Legislative power to issue the bonds as shown above.

These numerous great variances, and errors of law manifest in the decision of the Appellate Court in the case at bar can now only be rectified and harmonized, and justice be done your Petitioner in this honorable court of last resort.

Your Petitioner therefore further shows that she has filed herewith and made a part of this Application, her Assignments of Error and variances and that she has also caused a certified copy of the transcript of record in this case to be made, and that the same is filed herewith as a part thereof.

Whereupon, your Petitioner respectfully prays that this honorable court may be pleased to grant the Writ of Certiorari, requiring the case of Harriet M. Zane vs. The County of Hamilton, No. 675, October Term, A. D. 1899, United States

Circuit Court of Appeals for the Seventh Circuit, to be certified to this Honorable Court for its review and determination, and your Petitioner will ever pray, etc.

HARRIET M. ZANE, *Petitioner.*

By Geo. A. Sanders

Her Solicitor.